

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 28, 2009

STATE OF TENNESSEE v. BRIAN SHONDELL ROBERSON

Direct Appeal from the Circuit Court for Williamson County
No. I-8431 Robbie T. Beal, Judge

No. M2008-01155-CCA-R3-CD - Filed September 9, 2009

A Williamson County jury convicted the appellant, Brian Shondell Roberson, of one count of the sale of .5 grams or more of cocaine, a Class B felony. He was sentenced to thirty years as a career offender and fined five thousand dollars. On appeal, the appellant challenges the sufficiency of the convicting evidence. After reviewing the record, we affirm the appellant's conviction.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Gene Honea (on appeal) and Trudy Bloodworth (at trial), Franklin, Tennessee, for the appellant, Brian S. Roberson.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; Kim R. Helper, District Attorney General; and Sean B. Duddy, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

This case arose from the appellant's sale of cocaine to Sylvester Island on July 3, 2003. Glenn Everett, a Special Agent with the Tennessee Bureau of Investigation Crime Laboratory, was the first witness at trial. Agent Everett testified that he tested a white rock he received in connection with this case and that it contained 4.1 grams of cocaine. Agent Everett testified that he was "a hundred percent sure" that the substance was cocaine, but he admitted that he had no knowledge that the appellant sold it.

Agent Leonardo Zollicoffer testified that he was employed by the Williamson County Sheriff's Department and was assigned to the drug task force on July 3, 2003. Agent Zollicoffer said

that Sylvester Island, a “cooperating individual,” assisted the task force in an undercover operation involving the appellant. The task force paid the rent and utilities on an apartment for Island in an area where they had received numerous complaints about drug activity. Island was also paid one hundred dollars for his purchase of drugs from the appellant. Agent Zollicoffer said that on July 3, Island called the task force and said that he had arranged to purchase cocaine from the appellant. He said that he needed two hundred dollars to make the purchase. Agent Zollicoffer said that he and other agents from the drug task force met with Island before the scheduled purchase. Agents searched Island and his car, and they also wired Island in order to listen to and record his conversations. They gave Island two hundred dollars to make the purchase and followed him a short distance to the target area. Agent Zollicoffer explained that the task force was unable to maintain visual surveillance of the transaction. He said that the agents stopped following Island to avoid jeopardizing the transaction; however, they maintained audio surveillance. The agents met Island after the transaction, and Island gave Agent Chris Mobley a bag containing cocaine. They debriefed Island and then searched him and his car again. An audio tape of the transaction was played for the jury.

On cross-examination, Agent Zollicoffer conceded that Island would not have been paid if he had not returned with drugs. He conceded that Island could have engaged in illegal or inappropriate behavior at times when he was not working for the drug task force. Agent Zollicoffer also acknowledged that he had no independent knowledge to verify the appellant was the person heard on the tape. Neither he nor the other agents involved saw the appellant sell Island cocaine. He also conceded that there was no mention of the price or the type of drugs on the audio tape.

Agent Chris Mobley testified that he was working with Agent Zollicoffer on July 3, 2003. Agent Mobley said that Island notified him that he had arranged to purchase two hundred dollars worth of crack cocaine from the appellant. Agent Mobley met with Island and searched him before the transaction. Based on his search, he did not think that Island could have taken drugs with him to meet the appellant. Agent Mobley testified that he tried to obtain video surveillance of the transaction but that the video equipment failed. He met with Island after the transaction and retrieved the bag of cocaine.

Agent Joey Kimble, the Director of the Twenty First Judicial District Drug Task Force, testified that in 2003 he was the evidence custodian for the drug task force. He met with Island and other agents after the transaction in this case. He explained the drug task force’s chain of custody procedures and testified that he hand-delivered the cocaine Agent Mobley received from Island to the Tennessee Bureau of Investigation Laboratory for testing.

Sylvester Island testified that he worked for the drug task force as a cooperating individual in July, 2003. He was compensated one hundred dollars for each transaction, and the task force paid the rent and utilities for his apartment. Island testified that on July 3, 2003, he saw the appellant on the street and that he told the appellant he would be looking for an eight ball of crack cocaine around one or two o’clock that afternoon. Island said he agreed to pay the appellant two hundred dollars for the drug and arranged to meet him on Natchez Street. He then called Agent Chris Mobley to inform

him of the scheduled transaction. Agent Mobley told Island that he could not meet with him until after two o'clock. Island said he met with Agent Mobley and other agents of the drug task force around 2:20 p.m.

Island testified that the agents searched him and his car. They also placed a wire on him and installed video equipment. Island said that the agents gave him two hundred dollars to make the purchase and that he drove to the Natchez area where he was supposed to meet the appellant. When he did not see the appellant on Natchez Street, Island continued to drive around the area until a white vehicle stopped in front of him in the middle of the road. As he started to drive around the vehicle, he heard its horn blow and saw the appellant roll down the window and yell to him.

The appellant instructed Island to follow him to Spring Street. Once there, the appellant parked his vehicle and got into the passenger seat of Island's car. Island said that the appellant lifted his shirt to show Island that he was not wearing a wire and urged Island to do the same. Island told the appellant that if he had to go through that, he did not need his product. After some banter about Island's refusal to lift his shirt, the appellant pulled two bags of crack cocaine from his pocket. Island testified that he chose the larger bag and gave the appellant two hundred dollars. Island mentioned to the appellant that he expected to get four or five hundred dollars for it. The appellant exited Island's car and got back into his own vehicle. Island said that the appellant followed him "around for a minute" and that he tried to lose the appellant. Island drove to his apartment and pulled in the driveway to make the appellant think he was going home. The appellant drove past him. Island thought that the appellant was gone, but, when he pulled back out, he noticed that the appellant continued to follow him. He said that he drove around until the appellant stopped following and then went to meet with drug task force agents. He gave Agent Mobley the bag of crack cocaine he had purchased from the appellant, and officers searched him and his car again.

Island admitted that he was convicted of criminal possession of a forged instrument in 1988 but said that he had no other convictions involving dishonesty and that he was truthful in his testimony. Island also said that he had worked undercover for other local drug task force agencies, the Tennessee Bureau of Investigation, the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms, and the Drug Enforcement Agency. The audio tape corroborated Island's testimony regarding the transaction.

II. Analysis

On appeal, the appellant contends that the evidence is insufficient to support his conviction. Specifically, he challenges Island's credibility because he was paid to be a cooperating individual. He notes that Island was the only person to identify the appellant's voice on the audio tape and was the only person who claimed to have seen the appellant sell cocaine. He argues that the State did not maintain visual surveillance of Island when he took the detour to his home after the alleged transaction and that the State presented no proof to corroborate Island's allegation that the appellant followed him. He argues that Island could have fabricated the transaction. The State counters that

it is not this court's function to delve into the credibility of witnesses and that sufficient evidence to support the jury's verdict was presented at trial. We agree with the State.

When an appellant challenges the sufficiency of the convicting evidence, the standard for review by an appellate court is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); see also Tenn. R. App. P. 13(e). The State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions concerning the credibility of witnesses and the weight and value to be afforded the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh or reevaluate the evidence, nor will this court substitute its inferences drawn from the circumstantial evidence for those inferences drawn by the jury. Id. Because a jury conviction removes the presumption of innocence with which a defendant is initially cloaked at trial and replaces it on appeal with one of guilt, a convicted defendant has the burden of demonstrating to this court that the evidence is insufficient. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

The appellant vigorously challenges Island's credibility on appeal. However, the credibility of witnesses is determined by the jury, not by the appellate courts. Bland, 958 S.W.2d at 659. After evaluating the witnesses, the audio tape of the transaction, and the other evidence presented at trial, the jury acted within its province when it accredited Island's testimony. Taken in the light most favorable to the State, the evidence presented at trial supports the jury's conclusion that the appellant knowingly sold Island .5 grams or more of cocaine in violation of Tennessee Code Annotated sections 39-17-417(a)(3) and (c)(1). Accordingly, we affirm the appellant's conviction.

III. Conclusion

Based upon the record and the parties' briefs, we affirm the judgment of the trial court.

NORMA McGEE OGLE, JUDGE